

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(PJC)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**PLAINTIFF'S OPPOSITION TO SEPARATE DEFENDANTS, GEORGE'S INC.'S AND
GEORGE'S FARMS, INC.'S MOTION FOR PROTECTIVE ORDER REGARDING
CERTAIN FINANCIAL DOCUMENTS**

Plaintiff, the State of Oklahoma, ("the State") respectfully opposes Defendants, George's Inc.'s and George's Farms, Inc.'s (collectively "George's") Motion for Protective Order Regarding Certain Financial Documents. [DKT #2046]. In light of the deadlines for summary judgment motions and *Daubert* motions in this case, it is perplexing why George's would waste both its and the Court's time and resources on two motions regarding the same issue. First, George's filed a motion to strike a supplemental report of an expert in which his opinions did not change, but merely incorporated George's own financial data that was voluntarily produced. Now, George's seeks with no authority whatsoever a "do-over" with respect to the voluntary production of that information. It is incredible that the parties are before the Court on this issue again.

Throughout its Motion, George's claims that it did not waive any objections by producing the subject information and that such information was not discoverable. However, George's makes these claims without citing to any supporting authority. George's relies upon this Court's

March 13, 2009 Order which refused to require Defendants to produce certain financial information as a retrospective Order requiring the State to return materials that George's voluntarily produced. However, the Order did not address the issue presently before the Court. George's waived its ability to have these materials returned when it produced this information absent a Court order to do so.

George's claims that it made a prompt demand for the return of the income statements and balance sheets. However, nearly a month passed from the Court's March 13 order and the time George's demanded (without any authority) the return of the income statements and balance sheets at issue. Moreover, it cannot go unnoticed that George's produced these materials nearly six months ago. If George's really believed the Court's March 13 Order required the State to return the subject information, it is curious that it would delay in seeking its return.

Noteworthy, during October through December 2008, counsel for the State had several telephone calls and exchanged multiple emails with counsel for George's regarding the information sought related to George's financial condition. This Court is wholly familiar with that dispute, and the State will not waste the Court's time on replowing that ground. However, the State must stress that no agreements were reached (or reneged upon) as set forth in George's Motion. *See, e.g.*, George's Motion at p. 2. The State merely informed George's that balance sheets were a start and that it would consult with its expert upon receipt to determine if such documentation was sufficient.

Along that vein, George's claims that the State ignored its demand for the return of the subject financial information. However, on April 24, 2009, counsel for the State informed George's that it was unclear on some of the positions George's had taken with respect to the January 2, 2009 information (which the State did not receive until January 5, 2009) and offered

to discuss the matter at the April 27-28 deposition of David Payne. George's responded that the State "[knew] [its] position on the January 2, 2009 information based on the Motion to Strike now pending." George's did not attempt to discuss this matter with counsel for the State during this two-day deposition of Mr. Payne. The State's counsel took George's silence to mean that the only issue that remained unresolved between the parties was George's Motion to Strike. As a result, the State believed all disputed matters were already before the Court. In any event, there is no basis for requiring the State to return financial information that George's voluntarily produced in January of this year and in the Fall of 2008.

Significantly, between May 8 and May 19, Defendants filed 15 motions, including motions in limine, motions challenging experts' qualifications and methodologies, and motions for summary judgment. See DKT ## 2028, 2031, 2033, 2046, 2050, 2055, 2056, 2057, 2067, 2068, 2069, 2078, 2079, 2082, 2090. Defendants' deadline to file *Daubert* challenges to the State's experts whose depositions occurred after April 16, 2009 is June 19, 2009. Defendants, including George's, have signaled an intention to file such motions with respect to Mr. Payne and other of the State's damages experts at that time. Therefore, the parties and the Court are inundated with motions regarding the substance of testimony and claims that will be presented to the jury. Why George's would file a motion regarding materials that it voluntarily produced and that are protected by the Confidentiality Order [DKT # 985] in effect in this case is perplexing to say the least. The State submits that this is another instance where "the Court's time is much better spent on matters that move this case forward rather than motions such as this one." [DKT #2023].

Wherefore, the State respectfully requests that the Court deny George's Motion for Protective Order.

Respectfully Submitted,

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